

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RICHARD ALFANSON SMITH,

Petitioner,

v.

JOHN TSOUKARIS, et al.,

Respondents.

:
:
:
:
:
:
:
:
:
:

Civ. No. 21-11214 (KM)

MEMORANDUM AND ORDER

Pro se Petitioner Richard Alfanson Smith,¹ an immigration detainee at the Bergen County Jail, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his prolonged detention. (DE 1.) He has also requested a stay of removal pending adjudication of his claim. (DE 2.) As to the Petition, it has sufficient merit to survive screening and I will direct the Government to answer. However, Petitioner's request for a stay will be denied without prejudice.

Even assuming that this Court has jurisdiction to issue a stay, Petitioner's challenge of his order of removal and request for a stay before the Third Circuit were both rejected before he filed this Petition. *Smith v. Att'y Gen. United States*, 833 F. App'x 369 (3d Cir. 2021). EOIR records show that Petitioner's subsequent motion to reopen before the Board of Immigration Appeals was dismissed on December 7, 2021. The thirty-day period to petition the Third Circuit for review, 8 U.S.C. § 1252(b)(1)), has passed without any apparent record of a new petition having been filed in that Court.

Moreover, Petitioner has not provided any justification for the stay, or for a departure from the general principle that removal does not deprive a petition of the ability to litigate a motion to reopen from abroad. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *cf. Sean B. v. McAleenan*, 412 F. Supp. 3d 472, 488 (D.N.J. 2019) (because of his cooperation with the United States government in a prosecution of a dangerous Jamaican drug trafficking organization, Petitioner plausibly alleged that he could not litigate from Jamaica).

IT IS, THEREFORE, on this 28th day of January, 2022,

¹ The Petitioner's middle name is variously rendered in the record as "Alfanson," "Alfanzo," and "Alfonso."

ORDERED that in accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 through Rule 1(b), this Court has examined the Petition and determined that dismissal prior to submission of an answer and the record is not warranted; and it is further

ORDERED that Petitioner's request for a stay is denied without prejudice.

ORDERED that the Clerk of the Court shall serve a copy of the Petition (DE 1) and this Order upon Respondent by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk of the Court shall forward a copy of the Petition, (ECF No. 1), and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that within thirty (30) days of the date of the entry of this Order, Respondent shall file and serve an answer which responds to the allegations and grounds in the Petition, and which includes all affirmative defenses Respondent seeks to invoke; and it is further

ORDERED that Respondent shall file and serve with the answer certified copies of all documents necessary to resolve Petitioner's claim(s) and affirmative defenses, including the administrative record, with each exhibit filed separately and descriptively identified; and it is further

ORDERED that within thirty (30) days of receipt of the answer, Petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of Petitioner's release, be it parole or otherwise, Respondent shall electronically file a written notice of the same with the Clerk of the Court; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Petitioner by regular U.S. mail.

/s/ Kevin McNulty

KEVIN MCNULTY
United States District Judge